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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/778,371	02/07/2001	Cornelia Sprengard-Eichel	8369Q	6846

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EXAMINER

KIDWELL, MICHELLE M

ART UNIT	PAPER NUMBER
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3761

DATE MAILED: 07/30/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/778,371

Applicant(s)

SPRENGARD-EICHEL ET AL.

Examiner

Michele Kidwell

Art Unit

3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 February 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 07 February 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 5/6.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Information Disclosure Statement

The listing of references in the specification is not a proper information disclosure statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609 A(1) states, "the list may not be incorporated into the specification but must be submitted in a separate paper." Therefore, unless the references have been cited by the examiner on form PTO-892, they have not been considered.

Drawings

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: reference characters "56" and "54" are not shown in the drawings. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference sign(s) not mentioned in the description:

- "120"
- "38"
- "44"

- "500"
- "508"
- "510"
- "502"
- "504"
- "506"
- "43"
- "601"
- "605"

A proposed drawing correction, corrected drawings, or amendment to the specification to add the reference sign(s) in the description, are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Specification

The disclosure is objected to because of the following informalities: the information in lines 1 – 4 of page 17 should be completed.

Appropriate correction is required.

The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: the applicant has not provided proper antecedent basis for the Peltier Element as set forth in claim 11.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1 – 20 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

On page 8 of the specification, the applicant defines a thermal cell actuator as a thermal cell actuator. Since the applicant has chosen to use the same term to define the term given, it is unclear what the scope of the term encompasses. There is no other definition of a thermal cell actuator nor are any examples given that may provide clarity to the term. The description of a thermal cell actuator in the instant application would not allow one of ordinary skill in the art to make and/or use the invention.

Claim 8 is rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for a water vapor transmission rate of less than about $2600\text{g/m}^2/\text{day}$, does not reasonably provide enablement for no more than about $2600\text{g/m}^2/\text{day}$. The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention commensurate in scope with these claims.

The specification essentially supports less than $2600\text{g/m}^2/\text{day}$, but actually claims $2600\text{g/m}^2/\text{day}$. There is no support for an absorbent article with a water transmission rate of $2600\text{g/m}^2/\text{day}$.

Claims 1 – 2 and 4 – 20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

With respect to claims 1 and 2, the claims recite that the thermal cell actuator is capable of performing “a useful function on the article”. The scope of the claim is unclear. What does the applicant consider to be a “useful function”? A useful function can be liquid absorption or keeping undergarments from getting soiled. The language is considered vague and indefinite.

The claims also state that the this useful function is performed on the article or “environment between the article and the wearer.” The applicant has failed to define the claimed environment. It is unclear what the applicant intends to claim as an invention.

Claim 5 recites the following limitations:

- “the application of a tensile force” in line 2
- “the garment body” in line 3
- “the application of a normal force” in line 3.

There is insufficient antecedent basis for these limitations in the claim.

Claim 6 recites the limitation “the action of the caregiver” in line 1 and “the activation” in line 3. There is insufficient antecedent basis for these limitations in the claim.

Regarding claim 11, the applicant claims a "Peltier Element." This element has not been defined by the specification and it is unclear what this language encompasses. Correction is required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

Claims 1 – 4, 7, 9 – 10 and 12 – 13 are rejected under 35 U.S.C. 102(b) as being anticipated by Glaug et al. (US 5,797,892).

With respect to claim 1, Glaug et al. (hereinafter "Glaug") discloses an absorbent article comprising a backsheet (58), a liquid pervious topsheet (60) joined to the backsheet (col. 5, lines 34 – 38), an absorbent core (82) disposed intermediate the topsheet and the backsheet (figure 6) and a thermal cell actuator (54) capable of adding or removing heat from at least a portion of the absorbent article to perform a useful function on the article or the environment between the article and a wearer as set forth in col. 8, lines 51 – 57.

With reference to claim 2, Glaug discloses an absorbent article comprising a backsheet (58), a liquid pervious topsheet (60) joined to the backsheet (col. 5, lines 34 – 38), an absorbent core (82) disposed intermediate the topsheet and the backsheet (figure 6) and a thermal cell actuator (54) capable of adding or removing

heat from at least a portion of the absorbent article to perform a useful function on the article or the environment between the article and a wearer (col. 8, lines 51 – 57) and a triggering mechanism connected with the thermal cell actuator whereby a non-urine based signal within the article causes the thermal cell actuator to add or remove heat from at least a portion of the absorbent article as set forth in col. 9, lines 61 – 63.

As to claim 3, Glaug discloses an absorbent article comprising a backsheet (58), a liquid pervious topsheet (60) joined to the backsheet (col. 5, lines 34 – 38), an absorbent core (82) disposed intermediate the topsheet and the backsheet (figure 6) and a thermal cell actuator (54) capable of adding or removing heat from at least a portion of the absorbent article to perform a useful function on the article or the environment between the article and a wearer as set forth in col. 8, lines 51 – 57.

While Glaug does not specifically disclose an electrically powered thermal cell actuator, a thermal cell actuator is disclosed nonetheless. The examiner reminds the applicant that even though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process.

Regarding claim 4, Glaug discloses an absorbent article wherein the thermal cell actuator performs a function between the backsheet of the article and the skin of the wearer in response to a change in relative humidity, moisture or temperature as set forth in col. 8, lines 51 – 57.

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As to claim 7, Glaug discloses an absorbent article wherein the thermal cell actuator controls humidity or temperature in the article as set forth in col. 8, lines 51 – 64.

With respect to claims 9 and 10, see col. 9, lines 45 – 52.

Regarding claim 12, Glaug discloses an absorbent article comprising a thermal cell actuator that provides a constant temperature in a region of the article during use of the article of about 15° to about 25° Celsius as set forth in col. 9, lines 3 – 5.

As to claim 13, Glaug discloses an absorbent article wherein the thermal cell actuator is not in contact with the wearer's skin when the article is worn as set forth in figure 6.

Claims 1, 5 – 6, 14 – 15 and 19 are rejected under 35 U.S.C. 102(b) as being anticipated by Hasse (US 5,769,832).

With respect to claim 1, Hasse discloses an absorbent article comprising a backsheet (26), a liquid pervious topsheet (24) joined to the backsheet (col. 4, lines 19 – 20), an absorbent core (28) disposed intermediate the topsheet and the backsheet (col. 4, lines 20 – 21) and a thermal cell actuator (42) as set forth in col. 6, lines 1 – 9.

Regarding claims 5 and 6 and 15, see col. 2, lines 36 – 46.

As to claims 14 and 19, see col. 2, lines 3 – 46 and col. 19, lines 20 – 31.

Claims 1, 8 and 17 – 18 are rejected under 35 U.S.C. 102(e) as being anticipated by Roe et al. (US 6,407,308).

With respect to claim 1, Roe et al. (hereinafter "Roe") discloses an absorbent article comprising a backsheet (26), a liquid pervious topsheet (24) joined to the backsheet (col. 4, line 56), an absorbent core (28) disposed intermediate the topsheet and the backsheet (col. 3, lines 27 – 31) and a thermal cell actuator (70) capable of adding or removing heat from at least a portion of the absorbent article to perform a useful function on the article or the environment between the article and a wearer as set forth in col. 13, line 57 to col. 14, line 45.

Regarding claim 8, Roe discloses an absorbent article wherein the article has a backsheet region adjacent to the absorbent core having a water vapor transmission rate of no more than about $2600 \text{ g/m}^2/\text{day}$ through the incorporation of Curro (US 5,865,823) in col. 4, lines 33 – 37.

Curro discloses an absorbent article wherein the article has a backsheet region adjacent to the absorbent core having a water vapor transmission rate of no more than about $2600 \text{ g/m}^2/\text{day}$ in col. 2, lines 21 – 22.

As to claims 17 and 18, Roe discloses an absorbent article wherein the thermal cell actuator changes a dimension of a component of the article or a physical property of a component of the article as set forth in col. 13, line 57 to col. 14, line 17.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Glaug et al. (US 5,797,892).

The difference between Glaug and claim 16 is the provision that the constant temperature in the region is maintained for at least 1 hour.

It would have been obvious to one of ordinary skill in the art to provide a constant temperature that is maintained for at least 1 hour since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges requires only ordinary skill in the art.

Claims 19 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Glaug as applied to claims 1 – 4, 7, 9 – 10 and 12 – 13 above, and further in view of Hasse (US 5,769,832).

The difference between Glaug and claim 19 is the provision that the thermal cell actuator effects the environment between the backsheet of the article and the skin of the wearer by decreasing malodorous vapors or increasing fragrance.

Hasse teaches an absorbent article having a thermal cell actuator effects the environment between the backsheet of the article and the skin of the wearer by decreasing malodorous vapors or increasing fragrance as set forth in abstract.

It would have been obvious to one of ordinary skill in the art to modify the absorbent article of Glaug to employ a thermal cell actuator that effects the environment between the backsheet of the article and the skin of the wearer by decreasing malodorous vapors or increasing fragrance because this would allow consumes to avoid exposure to body malodor upon removal of the article from a wearer as taught by Hasse in col. 1, line 62 to col. 2, line 7.

As to claim 20, Glaug discloses an absorbent article wherein the thermal cell actuator provides at least a portion of the article with a temperature of less than about 25° Celsius as set forth in col. 9, lines 3 – 5.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michele Kidwell whose telephone number is 703-305-2941. The examiner can normally be reached on Monday - Friday, 7:30am - 4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dennis Ruhl can be reached on 703-308-2262. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-3590 for regular communications and 703-305-3590 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0858.


Michele Kidwell
July 24, 2002


DENNIS RUHL
PRIMARY EXAMINER